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University of San Diego School of Law Student Bar Association

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# MOTIONS

University of San Diego School of Law

Volume 41, Issue 2

October 2005

## The Trials of Bar Review by Aaron Dumas

So before I start this I must confess to a severe bias; after all, I do put on Bar Review and therefore my judgment is clouded. My attachment to Bar Review notwithstanding, I was asked to write about Bar Review and because I unabashedly love Bar Review I took on the challenge. So you might ask why would someone who loves Bar Review title his article ‘The Trials of Bar Review?’ I would then reply: because I can! Or I could reply that I did it because no matter how much I love Bar Review I can recognize that to many, Bar Review is a gateway to trouble.

Let me start by giving some anecdotal background information. The very first Bar Review

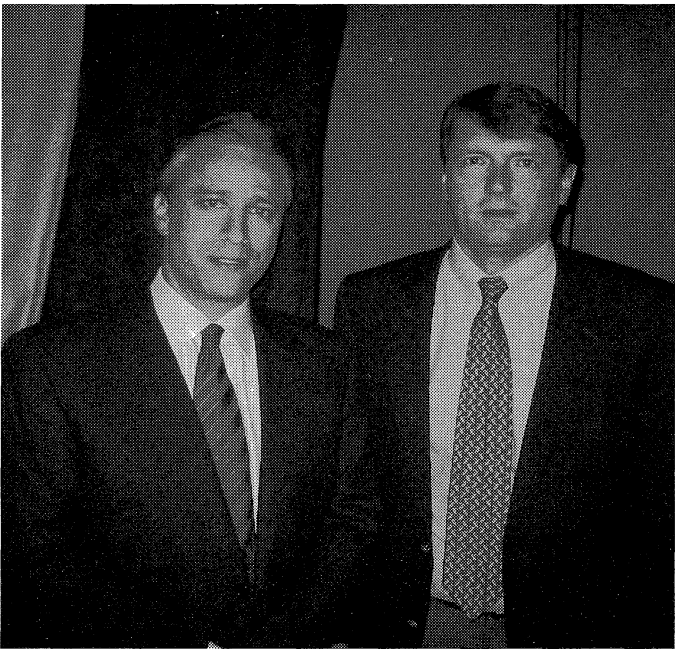
***“No one needs an education on the effects of alcohol; we all know that it can lead someone of the opposite sex to seem way more attractive than they can possibly be.”***

that I ever attended as a wild eyed eager to make a good impression 1L was interesting to say the least. I came into school thinking that Bar Review was going to be a docile affair with pretentious students standing at a bar exchanging stories about the Supreme Court (sadly, sometimes it is). However, on entering the bar I was greeted with a wild scream, dragged into the middle of the dance floor and ‘forced’ to bump and grind to music blaring from the speakers. Gone were all thoughts of decorum and making a good impression, instead they were filled with thoughts of pointing “...to the window, to the wall” and screaming “Get Low” while attempting to hold the hips of the young lady in front of me whilst lowering my body to the point where I would win most limbo competitions.

Yet all the debauchery that was occurring was nothing to what would be the pièce de résistance of the evening: a pudding wrestling concert! Yes indeed, a real live, knock down, drag out pudding wrestling event. At Bar Review? Truly this was an event that could not be! How could my introduction to a night of law students drinking contain women stripping down to undergarments to roll around in viscous fluids while being cheered on by drunken screaming, leering men and looked at with faces containing disapproval by the women. Rumor had it that one of my classmates was involved in the pudding wrestling; however, I never got to find out whom or if it were true, should anyone have any clue as to whom this young lady is, it would be my pleasure to make her acquaintance.

Pudding wrestling, drinking and dancing, fun as they may be, are not part of the trials of bar review. No, the trials tend to actually attach themselves to students. They can affect you physically and they can affect you emotionally. The trials can be so far reaching, that they can even affect persons not attending Bar Review. No one needs an education on the effects of alcohol we all know that it can lead the opposite sex to seem way more attractive than they can possibly be. Alcohol can cloud the judgment so much to the point that the same girl who has sat in front of you for a year in Civil Procedure and you always thought that her hair was horrible can look suddenly like Miss America.

How could such a basic event, one that has alcohol, one that allows people who do not normally get to talk to each other because of the stress of school, contain trials? Simple, because the event contains alcohol and it allows people who do not normally get to talk to each other outside of school to interact. A night of heavy drinking can turn what was an innocent school crush into a romp in the hay (Was that a politically correct enough way to describe a night of sexual indiscretion? I have always wanted to use the phrase romp in the hay and have it published). Take the case  
*Please see Bar Review, continued page 8.*



Jon Stewart and Professor Ed Larson on the set of *The Daily Show* in September.

## Who says world travel and law school don’t mix? Here’s one way to do it: by Karen Luong

I was bitten by the travel bug in 2001, when I took my first backpacking trip around Europe. I started in Paris in the 10<sup>th</sup> Arrondissement, next to a chocolate shop, and ended several months later at an old mansion in the Marais, having come full circle around the continent and collected indelible memories, an equally indelible, rather large, tattoo (but that is another story altogether), a pocket full of loose rolling tobacco and a promise to myself: that I would see the world while I am young, so I could use the knowledge and wisdom I gain from independent travel to live a more fulfilling life.

Then, I applied to law school. And suddenly, my dreams seemed like just that—pies in the sky, soon to be crushed, along with my self-esteem, by the weight of 20-pound textbooks and three-prong tests.

About this time during my first semester as a

***“... none of my employers, not even the one who flew me over to Hong Kong last summer, asked me for my transcript.”***

1L, my prospects of ever traveling beyond the confines of my musty LRC cubicle looked dim indeed. I needed a way out.

I decided to study abroad the summer of my first year, and to network like crazy wherever I ended up, in hopes of landing an internship abroad for the summer of my second year. I signed up for Santa Clara Law’s summer abroad program in Hong Kong, which gave me a month of classes in HK, a guaranteed one-month internship at a Hong Kong firm, and seven units, for \$3500.00 (a great deal in comparison to most other study abroad programs out there). I spent the summer of first year studying at Hong Kong University, and interning with in-house counsel at a large international charity. During my internship, I introduced myself to as many people as I possibly could, and made it known that I was looking to return to Hong Kong the next summer for a legal internship, preferably at a firm practicing corporate law and working with MNCs.

During my second year of law school, I joined the Vis Moot International Arbitration Team, which takes place each year in Vienna, Austria and Hong Kong, China. Competitions like the Vis Moot provide law students with a much-needed global perspective

*Please see World Travel, continued page 5.*

## USD Visiting Professor’s Daily Show Experience by Professor Ed Larson

I was contacted the week before the show was to air about being on the final segment with Jon Stewart in a panel with a creationist. As it turned out, there were two creationists -- both very different -- but the show’s producers did not want to tell me in advance about Ellie Crystal. The Daily Show people arranged everything, including the flight up and back, a room at a nice hotel, and cars to pick me up at every stop. I managed to slip the trip in without missing a class here [at the University of Georgia, where Professor Larson teaches] by flying back early the next morning. Being from a small town, what amazed me most was that the car and driver that picked me up at the hotel to take me about 10 blocks to the studio was directed to wait during the entire show. The same car and driver took me back the 10 blocks to the hotel after the show ended. I could have walked, and certainly the car did not need to wait. Our newly conservation-minded president would have deplored the waste of gas.

Jon Stewart was delightful. He came by my dressing room before the show and we talked for about 15 minutes one on one. In that setting, he is not funny, but he is charming and easy going. He asked me lots of questions about evolution and the law. For example, an earlier guest had referred to the “scientific community,” so he asked me, “What is the scientific community?” “Who is in it?” That’s a good question, and I tried to answer it. What I liked best, he did not strike me as pretentious.

*Ed. Note: Professor Ed Larson teaches at the University of Georgia. He has taught several classes at USD, including Law, Science & Technology. He appeared on The Daily Show on September 19, 2005.*

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## University of San Diego

### SCHOOL OF LAW

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Our mission is to provide news, information, analysis and commentary to the students, faculty and staff of the University of San Diego, the University of San Diego School of Law, and the general legal community of San Diego. We believe that journalistic excellence is the soundest foundation for success. We pledge to seek and report the truth with honesty, accuracy, and fairness. These principles are cautiously guarded by each member of the Motion staff.

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## From The Editor

Greetings! If you're reading this, I want to commend you for not sending this issue directly to the recycling bin. You are holding in your hands one of the best issues of *Motions* ever. Ever.

There are a few changes afoot at *Motions* this semester. On the last page, you will find Sudoku, a Japanese numbers game. It will now be featured in *Motions*. We dare you to try it. Next, given the fact that many students spend a great deal of time online, *Motions* staff and advisors are considering whether or not to take *Motions* completely online. In addition to the trees that will be saved, we believe that an online-only edition of the paper will be a positive change in other ways.

First, we could avoid ever-increasing printing costs. Paper is likely to become only more scarce and expensive, whereas the *Motions* budget is unlikely to increase. Second, we believe that our readership will increase. Content-wise, the paper is current, but students are web-savvy. We already get much of our news and commentary online, so it follows that if the paper was published online it would garner more hits not only among our students but also from other students and practitioners across the country.

But what do you think? Some people that I have spoken to believe that *Motions* should exist both in print and online. Such an endeavor is tempting, but it will be costly in terms of money and time. If you have an opinion on this matter, please don't hesitate to make your opinion known by emailing us at [usdlawmotions@gmail.com](mailto:usdlawmotions@gmail.com).

Speaking of people making their opinions known, *Motions* was recently targeted by a local Catholic watch-dog group. According to its website, San Diego News Notes "features stories, articles and news of interest to Catholics and is published monthly by Concerned Citizens for Life." In the September 2005 online issue of the publication, the group took issue with the fact that I had interviewed attorney James McElroy in my (until this issue) regular column, Template of Success.

According to the piece, "Attorney James McElroy would seem a strange choice to be featured in the newspaper of a Catholic University." The piece goes on to argue that McElroy's C.V. is "not exactly a stellar resume for a Catholic law school product."

Are we to assume that because we go to a Catholic law school that we should only learn about Catholic law? Perhaps SD News Notes would like it if the Administration got rid of the Constitutional Law classes we have here and replaced them with the Exorcism classes still being taught to priests at the Vatican.

SD News Notes has highlighted an important issue for lawyers, writers, and other free-thinkers in modern American society. The U.S. Constitution is under attack by right-wingers. I take a lot of solace in the words of my fraternity brother and Marine Sergeant (currently serving in Iraq) Karl Nordeen who had this to say when I emailed him the text of SD News Notes' commentary. I was expressing shock at my newfound infamy. Sgt. Nordeen wrote back saying, "Remember, if being 'infamous' means...fanatics don't like you, it's a good thing."

Thanks, Karl. And thanks to everyone that made this issue happen. I hope my colleagues take as much pride in this as I do.

Sincerely,

Aaruni Thakur

For the full text of SD News Notes' commentary, you can visit <http://www.sdnewsnotes.com/ed/notes/2005notes/0509note.htm>

#### CORRECTIONS

In the last issue, there were a number of mistakes, but none more glaring than the clipped response of Harvey Levine to the following question. Below the question is Mr. Levine's entire response. *Motions* regrets the mistake.

**Motions:** Where do you see the legal profession heading in the next 20 years?

**Mr. Levine:** I cannot project where the legal profession will be going in the next 20 years. I perceive the legal profession as an organism responsive to international, national and local forces...the world appears to be changing so rapidly and is so unstable that it would be difficult to predict where the law will be going in the next 20 years, not to mention the legal profession!

## Dean Cole's Corner

Greetings from the Interim Dean:

I want to report to you on two matters: our search for a new dean, and my experiences on the road meeting the members of the club you will soon join—USD law graduates. ("Soon," I know, is a vague term, and some of you contemplating your first set of law school exams may doubt its accuracy here, but I assure you that someday you will look back and believe that your law school days flew by.)

As I write, the dean search is still in its "confidential" stage, in that the identities of the candidates have not yet been revealed by the Dean Search Committee. However, we have learned a bit about the overall pool of candidates, and about the procedures that have been and will be followed in reviewing candidacies.

The Committee's general sense is that we have attracted interest from a wide range of exceptionally talented candidates. Those who have been around for a while regard the pool as even deeper in talent than the pool from which we concluded our last successful search, a testament to the progress we made under the leadership of Dean Daniel Rodriguez. In the world of potential deans, USD is a hot commodity.

I am told that the Committee struggled mightily to identify a subset of the larger group to invite to San Diego for confidential, off-campus interviews with the Committee.

These sessions were designed to help the Committee to supplement the information that can be gleaned about the candidates from resumes and reference checks, and also to stoke the candidates' interest in USD and San Diego generally. Having now seen ten candidates in these 90-minute sessions, the Committee is narrowing the field even further to select around five candidates to bring to campus for full-fledged interviews.

The on-campus interviews will likely begin in early November and last about two days each, as candidates meet with faculty, administrators, and alumni. Students will also have opportunities to meet each candidate. These sessions are important, though perhaps primarily for a reason that may not be immediately apparent. We tend to think of "job interviews" as occasions for candidates to sell themselves to employers. But while USD is the employer in this relationship, the interview is a valuable occasion for impressing our candidates with what the school has to offer. Candidates will be keenly interested in the quality of the student body, and I am sure that they will be impressed with those of you with whom they come in contact. Many of the candidates we see may only be partly convinced that they should leave their current, comfortable surroundings to join our community. Interested, engaged, and thoughtful students will help to persuade these candidates to cast their lot with us.

Dean candidates will also be interested in the extent of alumni support for the school. Given my four months' experience as interim dean, I am sure that our alumni will impress the dean candidates as well. I have been greeted warmly by alums as I have interacted with them during my short tenure—even those alums to whom I gave low grades. Their enthusiasm for the school, and their pride in its accomplishments, will make our new dean's job immeasurably more enjoyable. Their enthusiasm should also buoy you. Many of our most prominent alums are devoting substantial amounts of their time and financial resources to help the school continue its upward trajectory. Their support shows their confidence in you, and also helps to justify it.

#### SUDOKU SOLUTION

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2	7	9	3	6	1	8	4	5
3	2	1	8	9	3	1	9	8
9	8	6	1	9	7	3	2	4
3	9	1	6	2	4	5	7	8



## War Declared on New Orleans' Hungry Diaper-less by Troy Pickard

"New Orleans Mayor Ray Nagin ordered police to drop rescue operations to fight looting and other crime that gripped the city." Those were the words reported by Reuters on September 1, 2005 that made me first realize how the U.S. government was going to treat the Hurricane Katrina disaster. Nagin issued an order to over 2,000 city police to abandon search-and-rescue missions.

Shortly after that, I saw a visibly angered Louisiana Governor Kathleen Blanco telling reporters, "We will do what it takes to bring law and order to our area." Apparently what it took was for Blanco to remove thousands of state National Guard troops from rescue detail and give them orders to shoot "looters" on sight.

But, the buck didn't stop there. The Pentagon reported that it would be sending in 3,000 regular army troops solely to "combat looters." And, President George

stores they sought out had already been decimated by Katrina. Once the clean-up truly begins, most of these stores will be declared total losses by insurance adjusters and the corporations that owned them will be fully compensated. Still, each level of government demonstrated a preference for property rights over human life. And it was a vile preference.

The police, state National Guard, and the soldiers should have been kept to search-and-rescue, refugee assistance and disaster response duties. Doing so would have done a great deal to reduce the death toll, quell the unrest and keep people safe. It worked in Biloxi, Mississippi – Biloxi had wide-spread looting, but once adequate food lines and shelters were set up, the looting eased considerably. It is surreal to even need to argue such obvious points.

Many people think that the lack of appropriate preparation and response to Hurricane Katrina is being

***"These people weren't criminals - they were simply too poor to have been able to get out of the city before it was besieged by a hurricane."***

W. Bush took a very firm stance against the situation in New Orleans, when he said "I think there ought to be zero tolerance of people breaking the law during an emergency such as this..."

Zero tolerance? That means no excuses are to be accepted. And, without a doubt, some of the lawlessness that took place in post-Katrina New Orleans was wholly intolerable. But, it doesn't take a FEMA expert to understand that the vast majority of "looters" were ordinary people taking reasonable measures to ensure the survival of themselves and their families. Sure, there was footage of a few guys stealing big-screens out of an electronics store. But, when its 90 degrees Fahrenheit in 85% humidity and the city is drowning in eight feet of fetid water strewn with dead bodies, most people aren't thinking that they should really get down to Circuit City to swipe some of those new HDTVs.

No, most people were thinking that their children hadn't eaten for two days, they were running out of clean water, and their babies had no diapers. These people weren't criminals – they were simply too poor to have been able to get out of the city before it was besieged by a hurricane. The grocery

blamed on President Bush because Bush is a white republican, and not on New Orleans Mayor Ray Nagin because Nagin is a black democrat. But, don't let anyone give you the wrong idea about Nagin - the New Orleans mayor was a registered republican until the age of 46, when he suddenly and inexplicably switched his party affiliation to democrat only a few days before he registered as a candidate for the 2002 mayoral election. Before that, Nagin was the vice-president of Cox Communications, a giant media corporation. And, Nagin is so wealthy that he was able to fund his mayoral campaign almost entirely with his own money. Nagin is in touch with poor blacks in New Orleans in the same sense that Bush is in touch with the citizens of Iraq. The issue in New Orleans isn't black vs. white; it's poor vs. rich. All of New Orleans' wealthy had ample opportunity to make their escape - but the poor and car-less citizens of all ethnicities never had much of a chance. The comfortable and wealthy politicians at every level of government all bear responsibility for their inaction.

*2L Troy Pickard has vowed to see Karl Rove in handcuffs by the end of the decade.*

## Minutemen's Relevance Ticking Away? By Jonathan Meislin

Recently, the Minutemen returned to the California-Mexico border to continue their mission to stop illegal immigrants from entering into the United States. Introduced to Southern California over the summer, the California Minutemen are an offshoot of the Arizona Minutemen who have operated along the Arizona-Mexico border since 2002. Although the operations of the Minutemen are perfectly legal, protesters, both public and private, have declared the group's actions as racist and an impermissible form of vigilante justice. Underlying these claims are the notions that our nation was founded by "illegal" immigrants and that much of our economy is supported by undocumented aliens. The Minutemen, however, debunk protesters' claims by pointing out the fact that their actions are to uphold the law against *illegal* immigration, rather than *Mexican* immigration.

Although personal opinions about the extent that our nation should turn a blind eye to illegal immigration may vary, there are a few undeniable facts that lean in the favor the actions of Minutemen. First, the Minutemen operate by lawfully upholding the law. Lawfully upholding the law, if done indiscriminately, is not racist, even if upholding the law does disparately impact certain groups of individuals. Second, although many immeasurable benefits are conferred upon our country by illegal immigrants, turning a blind eye to our nation's borders is both foolish and dangerous, especially in light of 9/11. One cannot seriously argue that our nation does not have an interest in knowing who and what enters into our national borders. Finally, although our nation was founded upon illegal immigrants, our nation's immigration policy, especially with respect to illegal and undocumented aliens, cannot be based on this fact in perpetuity. Our nation has enacted immigration laws because our nation must do so in order to protect our nation against enemies and to promote national interests. Although many, if not most, illegal immigrants may pose a net positive effect upon our nation and its interests, the interests of our nation and its immigrants would be better served by affording more opportunities for *legal* immigration, rather than by turning a blind eye to *illegal* immigration.

The U.S. employs 9,150 border patrol agents to regulate the 1,989 miles of the U.S. Mexico border. Although this averages out to about 5 agents per mile of border, most of our nation's border patrol agents are concentrated at the nation's 34 points of entry into the U.S., where nearly a million people enter into the U.S. every day. This lack of border enforcement has led to a continual influx of illegal immigration into the U.S. According to INS statistics, over 7 million illegal aliens were estimated to live within the U.S at the beginning of the year 2000. This number is estimated to increase by over 350,000 aliens per year. Many contend that the federal government's lax regulation of the border is due to a debated positive effect of the immigrants upon the U.S.'s economy. However, in light of recent reports that terrorist organizations, such as Al Qaeda, have exploited the holes in the U.S. Mexico border, both state and private citizens have reacted to the federal government's lack of border enforcement.

On the state level, Arizona's governor Janet Napolitano declared a state of emergency in Arizona's four southern counties, Pima, Cochise, Santa Cruz and Yuma, on August 15, 2005, freeing up 1.5 Million for increased state funded border protection. In declaring such an emergency, Napolitano stated, "The U.S. Constitution states that border security is a federal responsibility, but as a state governor, I must acknowledge that our federal government is falling short. ... It's time for us to act at the state level until the federal government acts." On the private level, a civil volunteer border watch program, named the Minutemen Project, has formed to watch our nation's borders.

The Minutemen started in October of 2002 when Chris Simcox, the owner of a local newspaper, *the Tombstone Tumbleweed*, invited his readers to join him in a "Citizens Border Patrol Militia." Simcox's group, which became known as the Civil Homeland Defense, began to patrol the Arizona Mexico border, aiding the U.S. Border Patrol in apprehending thousands of illegal aliens attempting to enter the U.S. In December of 2004, Simcox teamed with James Gilchrist to create the Minutemen Project, a volunteer civil organization organized to watch the nations borders and to report any illegal immigration to the proper authorities. More recently, the Minutemen have begun local chapters in California, New Mexico, Texas, Vermont, Michigan, *Please see Minutemen, continued page 7.*

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**Please Contact [kimberlye-07@sandiego.edu](mailto:kimberlye-07@sandiego.edu)**

## EU Slams Door in Windows' Face: The European Commission's Antitrust Suit against Microsoft by Laura Slezinger

Microsoft is in court again. The company is appealing a 2004 decision by the European Commission in which the EC sided with Microsoft rival, Sun Microsystems. The European Commission began investigating the company in 1998 in response to allegations by rivals Sun Microsystems of anticompetitive behavior. The EC brought proceedings against Microsoft in 2004 for abuse of a dominant position in violation of Article 82 of the Treaty of Rome (Treaty Establishing the European Community), challenging practices occurring at a later stage than those involved in the U.S. case. The EC held that Microsoft breached EU antitrust rules through discriminatory licensing and refusals to supply essential information about its Windows operating system. In particular, the European Commission focused on the media player and the low-end (workgroup) server (workgroup servers connect all desktop computers within an enterprise so that fellow workers can share applications, data, files, etc.). The EC's investigation, concluded that these nondisclosures were part of a broader strategy to

subject of the contracts.

The drafters of the Treaty looked to US Antitrust law as well as West German law for guidance. While the drafters of the U.S. Sherman Antitrust Act feared big business and an excessive concentration of private power, Western Europe, with its many small states, was more concerned with the conduct of those holding economic power and less concerned with the size of the enterprises. As defined by the European Court of Justice, a dominant position connotes economic power in a market, power to impose market terms on competitors, or more generally, power to hinder the maintenance of effective competition.

The suit addressed two main issues, one was Microsoft's bundling of Windows Media Player, and the other was Microsoft's refusal to release information necessary for competitors to produce applications with complete interoperability with Windows.

The Commission found that interoperability with Windows is indispensable to effective competition by rivals in the workgroup server market, however, the

may constitute abuse in exceptional circumstances (. First, access to the product, service or IP must be indispensable to enable the venture to carry on business in a market. If it is found that such access is indispensable, then it must be shown that the refusal is preventing the emergence of a new product for which there is a potential consumer demand, that the refusal is unjustified and such as to exclude any competition on a secondary market. Essentially, the market & consumer concerns outweigh Microsoft's IP rights.

The EC began market tests in June to determine whether Microsoft's plan to comply with the ruling was sufficient. The test relates to the interoperability aspect of the ruling, and follows concerns that Microsoft is charging too much for interoperability licenses and is not providing sufficient technical detail to allow competitors to assess whether they should buy a license, albeit there is no requirement on Microsoft to provide source code. Microsoft will also make available a range of packages of information from which interoperability recipients can choose according to their needs. There will also be a category of interoperability information that will be disclosed royalty-free.

The Commission also found that Microsoft tied its Windows Media Player (WMP) to its operating system, forcing users to take WMP to get the operating system, the result of which is WMP being as ubiquitous in the market as Windows is. The tying violated article 82, particularly paragraph (d), which says abuse of a dominant position may consist of "making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts."

As part of the ruling, the Commission mandated that Microsoft release an unbundled version of Windows, without Media Player. In a weak attempt at compliance, Microsoft is offering the unbundled version at the same price as the version containing Media Player, and planned to call it Windows XP Reduced Media Edition. The Commission recognized that the name was not particularly appealing to consumers and required Microsoft to change it to something a little more marketable. It is now being offered under the name "Windows XP Home Edition N" and "Windows XP Professional N," however, few retailers intend to carry it and so far no PC manufacturers intend to preinstall the software on PCs, though at least one has said it will install the software by request. European Antitrust officials were also trying to push Microsoft to sell the second version for less money, but last year's ruling did not require a price differential, so the Commission can only impose what was in the ruling.

Microsoft has protested in the past that

*Please see Antitrust, continued page 5.*

***"In a weak attempt at compliance, Microsoft is offering the unbundled version at the same price as the version containing Media Player, and planned to call it Windows XP Reduced Media Edition."***

foreclose competition in violation of Article 82 of the Treaty.

The European Community focuses on facilitating trade between member states, and prohibits types of activity which inhibits fair competition among rivals in a given market. Competition is a basic mechanism of the market economy and is a simple and efficient means of guaranteeing consumers a level of excellence in terms of the quality and price of products and services. In order to be effective, competition assumes that the market is made up of suppliers who are independent of each other, each subject to the competitive pressure exerted by the others. Agreements which restrict competition are prohibited under Article 81 of the Treaty, such as price-fixing agreements and cartels between competitors. Firms in a dominant position may not abuse of that position under Article 82 of the EC Treaty, such as predatory pricing aiming at eliminating competitors from the market.

The Treaty Establishing the European Community forbids abuse of a dominant position within the Common Market, or where the activity is incompatible with the Common Market in so far as it affects trade between Member States. Examples of such abuse include: unfair prices, unfair trading conditions, prejudicial conditions resulting in a competitive disadvantage, the limiting of production or technical development which may harm consumers, or making the conclusion of contracts subject to acceptance of obligations which are not commercially connected to the

software company deliberately restricted interoperability between its personal computer operating system and the operating systems of rival work group servers by refusing to provide sufficient interface information to other software companies. Microsoft's refusal to supply the technical information necessary for rival's products to work as well with Windows as Microsoft's workgroup server deprives the consumers of alternative products and undermines rivals' incentives to innovate, and constitutes an abuse of dominance in violation of Article 82.

The ruling required the company to help competitors achieve full interoperability with Microsoft's workgroup servers by giving them access to information such as communications protocols. The Commission also insists that the licensing terms for these protocols should include open-source software licenses. Microsoft claims that information relating to the inner workings of its software is intellectual property and protected by international copyright laws, and also that open-source licenses would violate its IP rights. However, allowing interoperability would not destroy any of Microsoft's rights under Copyright or Patent law, rather it allows competitors to produce applications which work smoothly with the Windows operating system. Additionally, Microsoft is entitled to a reasonable royalty for the intellectual property.

While in most situations, a company can license its intellectual property rights at its discretion, under a decision by the Court of Justice, a refusal to license

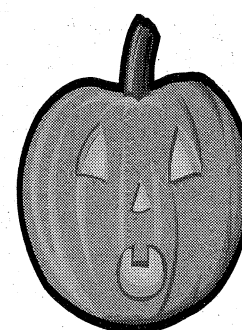
### Pride Law Looking For A Few Good Queers

Pride Law is the student group for lesbian/gay/bi/transgender law students and their friends. After a year of inactivity, advisor John Adkins of the Legal Research Center is getting the word out to all interested participants to contact him. They will be added to the Pride Law list serv and communications can begin about where the group wants to go in the coming year and years ahead.

In the past, the group has held social events with other law school pride groups, met with lawyers from the Tom Homann Law Association (the San Diego Bar queer lawyers group), and sponsored debates on legal issues like gay marriage. This is a banner year for queers in the law because the Lavender Law Conference is being held in San Diego from October 27-29 at the Westin Horton Plaza. This national conference for attorneys, legal professionals, and law students will address current issues that affect gay and lesbians in the profession, as well as provide an excellent career fair with job opportunities offered by some of the finest law firms in the country. Thanks to a generous funding grant, USD will be sending at least two students to the conference to represent us.

The first meeting of Pride Law will certainly be centered around free pizza, and we will go from there. Please send a note of interest as well as your ideas/comments/suggestions for the group to John at [adkins@sandiego.edu](mailto:adkins@sandiego.edu) or stop by the library to introduce yourself.

### THE HALLOWEEN PARTY



*is Coming!*

*World Travel continued from page 1.*

on real-world legal issues—an important skill set in an increasingly interdependent world. It has been the single most enriching academic endeavor I have undertaken here at USD.

I should probably admit here that I am one of the 90% of USD students who are not in the top 10% of my class. Not. Even. Close. I mention this to emphasize that grades do not have to be the impediment which so many people make them out to be. I am just one person, but none of my employers, not even the one who flew me over to Hong Kong last summer, asked me for my transcript. Why? Probably because I had been calling them and emailing them since my first year of law school, talking with and really getting to know them, and actively asking them to mentor me. By the time they offered me an internship, they already knew me well enough to not need to gauge me by my grades. Of course, being in the top 10% of the class opens up doors, but that does not mean that if you aren't in that magic bracket, the door to a fulfilling legal career is forever slammed shut—unless, of course, you believe it is.

I think it's a travesty that law school seems so demoralizing for so many students. When your entire worth as a human being is reduced to how you score on a three hour test, is it any wonder some of us feel unfulfilled? My point is: you don't have to take that view.

The most valuable lessons I have learned in life weren't learned in law school—they were learned in a back alley off of Las Ramblas in Barcelona; in a

*Antitrust continued from page 4.*

unbundling elements of Windows would be difficult and could even damage its operating system. One legal expert who has followed the case says unbundling WMP would be a victory for consumers and competitors. It would force Microsoft to compete based on the merits of its software. For consumers, such a decision would mean that they might continue in the future to have a choice of media players. However, Microsoft's position is that the removal of WMP would harm consumers.

Microsoft also rejects the Commission's main argument that Microsoft is using Windows' ubiquity to help it dominate the media player market. Many have feared that bundling WMP with Windows will allow it to reach the 90% of the market that Windows currently dominates, which in turn will inhibit the use of alternative or creation of new media formats which would be incompatible with WMP. Essentially, bundling WMP with Windows will lead to a monopoly by WMP in the media player market, which will lead to a monopoly by the WMP format and so on.

Some researchers warn that the growing complexity of code used in applications integrated with

dimly-lit pub somewhere off of a cobble-stoned street in Prague; under the crashing waves on a beach on Ko Chang; fifty feet up an almost vertical climb up the west tower of Angkor Wat. Pushing boundaries in areas of my life besides my studies has made me a more adaptive, responsive, resourceful, persistent person—all good qualities to have when you're looking for a summer job 6000 miles away from home, or a job as a first-year associate here in California.

Persistence paid off, and I've just returned from two more summer internships abroad. I was able to work on an amazing variety of deals, travel throughout Southeast Asia, and meet an amazing group of friends. Was I afraid of picking up and leaving to a country for three months where I had absolutely no friends and no family? Of course I was. But not nearly as scared as when I walked out of Wiggins's first-year Property exam.

Now, four years after my first backpacking odyssey, I don't carry rolling tobacco anymore (I quit smoking), but the tattoo is still there. And so is my resolve to not let law school get in the way of living and learning life's lessons. If I could give one piece of unsolicited advice to be posted on the fancy LCD electronic message boards around campus, it would be this: don't let other peoples' concept of what law school should and should not be shape the way you live the next few years. Think outside the box. After all, that's what you're here to learn how to do, isn't it?

*Karen Luong is a 3L at USD Law. She is a Co-chair of the Vis Moot Board, Sidebar Editor, SBA 3L Rep, et cetera. She can be reached at karenluong@gmail.com.*

Windows, such as Internet Explorer and Windows Media Player, augments the risk of security breaches. That if society is dependent on a single operating system from a single vendor, our critical infrastructure is much more vulnerable to disruption by a single blow. These academics and researchers in the field have found that many of the computer security problems we have today are the results of the monopoly.

At its center, the Microsoft case reveals a fundamental conflict between the emergence of new technology and the capitalist market. Increasingly, many agree that the unrivaled dominance of Microsoft has had a stifling effect upon technology innovation.

The ruling included a fine to Microsoft of around \$610 million (497 Million Euros). Microsoft paid the fine into an escrow account in July 2004, where it will be held until the appeal against the ruling has been resolved- a process that could take up to five years to complete. Microsoft has also filed a new appeal with a European appeals court to decide the source code access issue.

*Laura Slezinger wrote this piece on her Mac .*

Un-Conventional Wisdom

by Aaruni Thakur

I recently attended the Consumer Attorneys Association of Los Angeles (CAALA) 23<sup>rd</sup> Annual Las Vegas Convention. The four day event took place at the Mandalay Bay Events Center in Las Vegas and began with a kickoff party on September 8. Having no idea what to expect, I was pleasantly surprised by the level of organization and participation I witnessed.

According to their mission statement, CAALA and its member attorneys “have pursued the rights of injured victims by promoting safer products, workers’ rights, access to quality health care, and eliminating discrimination in the workplace” for over 50 years. Perhaps because of its longevity, CAALA knows how to throw and informative, fun, and profitable annual convention. I met attorneys that confessed that they attend the CAALA convention every year because it is considered more enjoyable than other legal conventions.

Interspersed between mixers, a judges’ reception, and cocktail hours were useful seminars for attorneys giving advice on closing arguments and trial tips. CAALA did a wonderful job of making sure that all of the panelists were experts in their field. One panel was comprised entirely of judges in Los Angeles County! During the Q&A, attorneys were getting candid advice from judges on how to win cases.

Perhaps one of the most interesting things I learned from attending this event was how the term “legal industry” doesn’t really do justice to our profession. There were rows and rows of vendors at the convention, and they were there because their businesses are closely aligned to legal practice. Not only were there other attorneys with booths looking for referrals, there were doctors and chiropractors, accountants and video deposition companies. All of them were handing out knickknacks.

What impressed me most about the event was the turnout. Over 2,000 attorneys made the trip from Los Angeles, and most arrived for the opening events and kick-off party on Thursday. It made me realize that this convention likely had a noticeable effect on lightening court dockets that day.

I also realized that, as important as networking is to practicing attorneys, it can also be helpful for students. Meeting practicing judges and attorneys in an atmosphere where everyone is having a good time is, I firmly believe, conducive to obtaining business cards.

Moreover, most professional groups offer special student rates. CAALA’s convention costs only \$15 for all four days. I think we should get the message: the organizers *want* students to attend, so they are trying to reduce the barriers to our participation. We should take full advantage of these opportunities. For more information on this event, please visit [www.caala.org](http://www.caala.org).

*Aaruni Thakur is a 3L who is considering working as an Elvis impersonator in Vegas if this whole ‘law school thing’ doesn’t pan out.*

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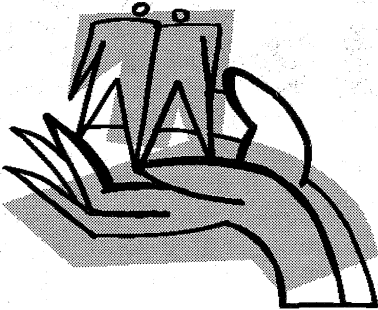
Earthquake in South Asia

78,000 dead  
3 million homeless  
120,000 kids without aid

"The world is not doing enough"  
-J. Egeland, UN Relief Coordinator

To donate money or items for a law school  
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## Price of the Bar? \$3,000. Price of Morality? \$300.

### Not Having to do This Stuff? Priceless.

by Bron D'Angelo

You can just tell. All around you things are changing. The sun comes up a little later, and goes down a little earlier. Weekends that were once filled with outdoor adventures in sea and sand are replaced by weekends in front of the TV, sometimes multiple TV's, cheering on your favorite football team, or just hoping for one more touch down by your fantasy football stud. Elsewhere in the country, the leaves on the trees are changing color and falling to the ground, (San Diego has yet to get that memo). Yes ladies and gentlemen, fall is finally here.

However, the once familiar measuring sticks that indicated to me that fall was nigh have been replaced with a scale of a different sort since my entrance into the world of law school. Instead of leaves changing colors, 2L's and 3L's are changing into suits in the hopes that they can secure some summer and/or after-Bar employment. The sun is probably setting a little earlier, but nobody notices because they are in the library until the wee hours of the night. Granted, weekends that were once spent outdoors are still now spent in front of the TV watching football, but I guess there has to be some constant. This is how the last two years of law school have gone for me, and how I expected the final fall of my law school career to go as well, and it started off that way...until I learned about the price of morality.

It was a Tuesday, or maybe a Thursday, as a 3L I don't really care anymore; I feel as though I am so rarely on campus that the days I am tend to merge together. (Note: For those of you in your first year, what your mentors told you really is true, once you get to your third year, you really don't care anymore... look forward to it!) Whatever the day, I made a rare stop to my long since forgotten mailbox. Cluttered within the green folder that I have known for three years was an assorted amount of junk mail. Advertisements for the week's social events, promises by individuals to raise my law school grades, and even a few pleas for me to attend

to sign up without a fee? Apparently sometime during your first year, (So first years, get up on that.) What? You have no idea what I am talking about? Yeah me neither, thanks California, 'cause we are all made of money.

But it gets better. Next we have to take the MPRE. Now this one actually did not take me by surprise. We have all heard about the MPRE, and the good people at USD require us to take a class in order to prepare for it. At \$55 dollars this is the steal of all the Bar exam requirements. Here is where the catch comes. The first chance to take the MPRE is in November, and I advise you all to take this because, apparently, the MPRE is going to get a lot harder. Why? Apparently we just are not being ethical enough; somehow our morals have slipped as time passes. Nevertheless, California has deemed us immoral, and thus is making the test harder. Feel free to sign up at <http://actrs19.act.org/app3/mpre/mpre>. And by the way, you are already late as you needed to sign up by September 27, 2005. So guess what? More late fees.

Speaking of morals, this is the one that really made me do a double-take. We are required to take a moral character determination sometime in early October. What does that even mean? Am I to be put in a room with five people, strapped to electrodes, and they put a dollar in front of me and if I take it they zap me?!?! I have absolutely no idea, but apparently just passing the MPRE is not enough for the California Bar, I have to be tested on my moral character. The best part is the price. In order for the State of California to test my moral character they require \$378. To charge me that amount, at this early time in my career, is grossly immoral. They should be subjugated to their own test which they will, with no doubt, fail.

So here is the recap:  
If you were planning on moving out of state, you better be real sure, because if not, it is going to cost

***"You will be tested on your morals several times, by those who seem to have forgotten what it is like to have thousands of dollars of debt already. You have to sign up, and guess what, you have already missed the deadlines."***

a Mass of my choosing. For the most part I placed all of these in my trusty blue filing system located right near the mailboxes. (Feel free to use it if you want, but please, paper only.) But there was one the color of those fallen fall leaves that I had not seen since coming to San Diego. It was the color of pumpkin, the color of bright orange construction paper that I would use to make feathers for my hand turkey when I was in preschool... it was the color of fall. So I stopped and took the time to actually look over this 8 1/2 x 11 piece of nostalgia, and when I did, my heart sank just a little bit.

Within the four corners of this paper were the words that I had not hoped to hear for at least another semester. The California Bar Exam, admission requirements. There I was, faced with a slip of paper that informed me that not only was I going to have to meet certain requirements just to take the Bar, but that I was apparently already late on some of the initial steps! As I read further, mild annoyance started to turn into panic. The beads of sweat that are not supposed to grow on the brow of a third year law student who is only going to class half time started to appear just as they did when I took my first law school exam. How could the State Bar of California possibly expect me to meet these deadlines? And why did they feel it was necessary to make some of the deadlines so soon? For those 3L's who do not know what I am talking about, I want you to stop reading this and go straight to your mailbox. Did you get it? Good. Now you can share in my pain.

Many of you may be like me in this respect, I have no idea if I am going to stay in California, and for this hesitation the Golden State is going to make me pay through the nose. Sure California is great and all, but there are 49 other states out there. I really think this is some kind of conspiracy the Department of Housing and Urban Development has set up with the American Bar Association, but that is for another time, because before I can even sign the ink on an agreement to work with a firm I have deadlines to meet, and with those deadlines come fees.

The first fun little fee, that many of us have already apparently missed the deadline on, is registering with the California Bar. Apparently we have to establish an account with the Committee of Bar Examiners at <http://calbar.xap.com/applications/CalBar/>. The cost was \$80, not including a \$45 dollar late fee. Yes, we are already late, and we have to pay. So just when was the deadline

you a pretty penny. You will be tested on your morals several times, by those who seem to have forgotten what it is like to have thousands of dollars of debt already. You have to sign up, and guess what, you have already missed the deadlines. You also still have to sign up for the actual Bar exam (more info at <http://www.calbar.ca.gov>). And finally, morality will cost you \$378. So first years out there, get on the ball right now, because being a third year just got a whole lot more complicated.

*Bron D'Angelo hails from a small hillbilly town called Tucson known for its over 120 degree summers. He moved to San Diego in order to fulfill his childhood dream of going to law school, but after two weeks he wished that he had just become a forest ranger instead. Bron is most commonly found making pointless rants to people who don't care throughout the school. Feel free to stop him whenever you see him.*

## California Lawyers Converge

### on San Diego

by Laura Slezinger

The California State Bar Annual Convention descended upon San Diego for four days, from Thursday the 8th through Sunday the 11th. It featured a wide variety of Minimum Continuing Legal Education (MCLE) training sessions, as well as exhibitors promoting legal business services for the more than 5,000 attorneys expected to attend. There were also a number of events everyday featuring keynote speakers approaching law and the legal

***"[Judge Schroeder] concluded her speech with an appeal to President Bush to look to women in choosing the next Supreme Court Justice, noting that with O'Connor's retirement, the face of the Supreme Court is looking much like it did twenty four years ago. . ."***

profession from a variety of perspectives.

The exhibitor hall revealed the business and practical side of operating a law practice. Exhibitors included court reporters and forensic services to insurance and Lawyer's Assistance Programs (for lawyers with problems). Also present were names familiar to law students, such as LexisNexis and West, offering their online legal research services. Most students are vaguely aware that we will not have free access to Lexis and Westlaw for ever, but will be required to pay for the access to research and news that we've become dependant on. There were also exhibitors such as eJustice (<http://www.ejustice.com>), a local company which designs custom web sites for law practices as well as devising internet marketing strategies to attract potential clients. In the legal profession today, the internet is used not only to attract new clients but to retain clients by offering services such as a means by which they are kept informed on their cases. Most law practices outsource the creation of their website just as they may outsource printing services or IT. These aspects of practice are not something most law students contemplate until well after graduation. While the exhibitor hall did not necessarily present fodder for the most provocative legal questions, many of these resources are indispensable to running a successful practice of any size.

The opening night dinner was the California Women Lawyers 31st Annual Dinner featuring Judge Mary M. Schroeder of the United States Court of Appeals for the 9th Circuit. Judge Schroeder has served on the 9th Circuit since 1979, and previously served on the Arizona Court of Appeals. As the first female chief judge of the largest circuit in the country, she was an appropriate person to deliver an inspiring speech on "Women in the Law: How Are We Doing Really?" She cited some encouraging statistics; women now constitute 33% of the legal profession, while in the under 35

Please see California Lawyers, continued on page 8.

## USD ATLA

### Fall IntraCity Intramural Mock Trial Tournament

November 18-20th

All law students are invited to compete.

Participating schools include: USD, California Western and Thomas Jefferson.

Sign ups begin Friday, October 17<sup>th</sup> and end Friday, October 28<sup>th</sup> in GH 114/115.

There is a \$15 entry fee per person (if you join National ATLA, the fee is waived)

For more information: [atlusd@yahoo.com](mailto:atlusd@yahoo.com)

*Minutemen continued from page 3.*  
Minnesota, North Dakota, Idaho and Washington.  
The name "Minutemen" comes from America's Revolutionary War, where early American colonies trained elite militia members to be able to "fight in a minutes notice". The Revolutionary Minutemen were the first to report to battle in America's battle for sovereignty, which ultimately led to America's independence from England. Accordingly, the group feels that the name "Minutemen" is applicable because it is representative of the early Minutemen's vigilant concern for homeland defense. However, despite the name, the Minutemen claim that their project is not a call to arms, but rather, "a call to bring national awareness to the decades-long careless disregard of effective U.S. immigration law enforcement."

The Minutemen operate by camping out at various border crossing areas in order to alert the border patrol of any illegal border crossing activities. Minutemen are not allowed to physically contact or verbally or non-verbally communicate with any illegal aliens. When a volunteer spots an illegal alien attempting to enter into the U.S., the Minutemen operating procedures requires the volunteer to alert the border patrol and to allow the border patrol to take control of the situation. According to several field agents, the Arizona Minutemen effectively decreased illegal crossing of aliens from 500 to 15 illegal aliens per day in the Naco, Arizona area.

***“One cannot seriously argue that our nation does not have an interest in knowing who and what enters into our national borders.”***

Despite the volunteer efforts of the Minutemen to uphold our nation's laws through legal and non-aggressive means, the Minutemen Project has come under much protest. Websites post videos of protesters swarming Minutemen, chanting "Go home racists!" Negative feedback posted on the Minutemen's website ranges from the simple accusation of racism to direct threats of bombings and of computer viruses against the organization's members. The main criticisms of the protestors are that the group is racist, that the vigilante justice practiced by the Minutemen will lead to violence and possible death, that the American economy relies on illegal immigration, and that the nation has a history of illegal immigration. The Minutemen feel their actions are justified, despite these criticisms.

The main protest against the Minutemen is that they are, according to Anti-Minutemen protesters, racist. More specifically, the protesters claim that the group discriminates against Mexican Immigrants. However, the operation of the Minutemen, at least in theory, is not racist. According to the Minutemen's pledge, standard operating procedures and training manual, the organization's aim is to stop *illegal* immigration through legal means, rather than stopping *Mexican* immigration. As stated in the Minutemen Pledge, "A Minuteman believes that just as ethnicity, race, religion and all such factors are incidental and do not affect our God-given, constitutional equality as American citizens, such factors are also irrelevant in the debate over illegal immigration. There is no tolerance among Minutemen for racism or bigotry." In other words, the Minutemen aim to stop *illegal* immigration. The fact that their actions may have a disparate impact against Hispanics is incidental to their cause. Based on the fact that 69% of all illegal aliens are Mexican, such a disparate impact is almost inevitable.

Even if an individual Minutemen volunteer joined the organization because of its disparate impact upon Mexican immigrants, a claim of racism against the organization would be improper because the Minuteman organization operates by upholding the law, not based upon any individual's personal biases. To illustrate this point, imagine a situation where a racist individual becomes a police officer or a member of a neighborhood

watch group. It would be improper to shut down or protest the police department or the neighborhood watch organization, as long as the activities of the organization are conducted non-discriminatorily and in accordance with the law. Otherwise, any organization that employed individuals who had racist motivations could be protested or shut down, irregardless of the motivations and the effect of the organization as a whole.

Additional factors also point to the fact that the Minutemen Project, as an organization, is not racist. First, the group has set up chapters along northern states, including Vermont, Michigan, Minnesota, North Dakota, Idaho and Washington. It is very unlikely that the group will find illegal Mexican immigrants crossing into the U.S. through the U.S.-Canada border. More likely, the group is concerned with *illegal* immigration and smuggling coming from the northern U.S. border, where the U.S. only employs 334 border patrol agents to watch the nearly 4,000 miles of border between the U.S. and Canada. In addition, according to the group's website, the Minutemen are composed of individuals with racial ethnicities ranging from white to Hispanic to Indian, eight Minutemen participants are immigrants, and another sixteen are married to immigrants. Although this is less persuasive in dispelling racist claims against Mexican immigrants in particular, the claims support the contention that the group is accepting of any individual who wishes to support their endeavor against *illegal* immigration. Finally, the Minutemen only operate at

unguarded sections of the U.S. Mexico border, where there is a higher probability that individuals crossing the border are crossing illegally. This again shows the organization's lack of interest with respect to legal immigrants, and their sole objective in stopping illegal immigration.

In addition to the claim of racism, protesters claim that the group's vigilante activities will lead to violence. Both President Bush and Democratic Party Leader, Howard Dean, have criticized the group for their "vigilante justice", pleading that the border watching should be left up to the government. However, the Minutemen operate by reporting crime, not apprehending criminals, reducing any chance of violence. As stated earlier, according to the Minutemen's pledge, volunteers are prohibited from communicating or physically contacting illegal immigrants. In addition, volunteers are prohibited from brandishing weapons, except in self defense, or carrying restraining devices. Rather than contacting or interacting with illegal immigrants, volunteers are required to radio for the border patrol and cede any control as soon as the border patrol arrives.

The only report of violence in connection with the group was caused by protesters, not the minutemen. On May 25th, 2005, Hal Netkin, a Minutemen supporter, was leaving a speech given by a Minutemen leader. According to reports, as he was leaving, some of the 300 protesters in attendance surrounded Netkin's car, refusing to allow Netkin to leave the area and repeatedly hitting Netkin's vehicle with their fists, cans of soda and cans filled with marbles. Although Netkin was arrested after three people were knocked over and sent to the hospital as the car proceeded through the crowd, the police released Nekin, stating that he acted responsibly under the threat of damage and violence. The officers, after watching the video of the incident, arrested three protesters involved in the incident instead. In other incidences, reporters have unsuccessfully tried to spook the Minutemen into drawing weapons and have even gone undercover as a Minutemen volunteer to unsuccessfully uncover other instances of danger, violence and racism.

Although the protesters accuse the Minutemen of racism and promoting violence, the real issues behind

*Tickets on Sale*  
*October 17th*



*Buy yours from a club rep or the SBA*

the protesters' claims are that the American economy relies heavily on illegal immigrants for cheap labor and that we, as Americans, are in some respects illegal immigrants too, and therefore should not exclude those seeking relief from economic, social and political repression. The claim that the American economy relies on the cheap and often times undesirable work performed by illegal immigrants is possibly not far from true. Illegal immigrants normally perform such illegal and undesirable jobs as Agriculture, construction, domestic service, restaurants, resorts, and prostitution. According to one statistic, over 85% of all agricultural workers are undocumented aliens. Accordingly, complete exodus of illegal immigrants would, therefore, leave an irreparable void in the American economy. However, whether to support the continuation of illegal immigration is an arguable point. According to the INS study, 78,000 illegal immigrants currently living within the country are from countries that are of special concern in the war on terror. According to another study, illegal immigrant households monetarily contribute \$4,212 in taxes per year, but cost \$6,949 per year in welfare, social security, prison, education, and other social costs. Although a mass exodus of illegal immigrants may irreparably harm the country, continuing our lax protection of the border has obvious consequences.

The final issue underlying the complaints of the protesters is that America is a country of immigrants, has a history of immigration, both legal and illegal, and therefore should not discriminate against other would be immigrants. Though this argument may strike a cord when considering America's historically brutal and inhumane treatment with respect to Native Americans, it is nearly impossible in today's day and age to maintain a completely open border. As society becomes more concerned with crime and terrorism, borders need to become safer and more secure. As stated above, 78,000 illegal immigrants come from countries with suspected ties to terrorism. According to another study, illegal aliens account for 20% of all individuals either in federal prison or processed by federal courts, which is disproportionate to the fact that they only comprise of 3.6% of the U.S.'s population. Failing to regulate our borders is not only irresponsible; failing to protect our borders is dangerous, no matter what our nation's history. All nations have a reasonable interest in whom and what is passing through their borders.

Rather than leaving our borders unprotected, which allows drugs and paraphernalia associated with terrorism to enter into the country, the better solution would be to allow more legal immigration or work visas. Legal immigration and work visas would allow the U.S. government to track and retain information about immigrants entering into the U.S., allowing our country to better control the inflow of terrorists, criminals and illegal paraphernalia into our country. In addition, legal immigration would benefit immigrants who would be in a better situation to take advantage of many of the rights and protections afforded by our nation's laws. Contrary to the claims of many protesters, turning a blind eye to *illegal* immigration in lieu of increasing the availability of legal immigration is irresponsible, dangerous and contrary to our nation's interests, no matter what our nation's history is or what our nation has become reliant upon. Although the personal motivations of some of the individual Minutemen may be questionable, the operations of the Minutemen, as a whole, are in accord with these interests.

**TAX LAW SOCIETY**

Students interested in pursuing a legal career in taxation should become a member of the Tax Law Society and start networking with tax professionals. Beginning in November, society members will have the opportunity to receive tax training and certification through the IRS and to provide volunteer income tax assistance to elderly and low-income individuals. For more information about joining the Tax Law Society, please email the president, Matt McNair, at [usdtaxlaw@hotmail.com](mailto:usdtaxlaw@hotmail.com)



California Lawyers, continued from page 6.

bracket they make up 50%. However, she noted, there is plenty of room for improvement in court rooms, board rooms, and particularly the Supreme Court. While women are composing a greater amount of the legal profession overall, they are still drastically outnumbered by men in the highest positions, such as partners of firms and judges. She concluded her speech with an appeal to President Bush to look to women in choosing the next Supreme Court Justice, noting that with O'Connor's retirement the face of the Supreme Court is looking much like it did 24 years ago, before she was installed in office.

Friday featured a breakfast with newly elected Undersecretary of State, William P. Wood. Wood discussed the election issues and challenges, including voting technology and California's response to the Help America Vote Act. There was also a luncheon with Park Dietz, M.D., Ph.D., one of the country's most prominent and accomplished forensic psychiatrists. He has made a career of applying psychiatric knowledge to legal problems and issues of crime and public safety, acting as a researcher, consultant and expert witness. He has been an expert witness for many high profile cases, including the murder trials of John Hinckley Jr., Jeffrey Dahmer, Betty Broderick, Cary Stayner and Andrea Yates.

Saturday began with a roundtable discussion on the California Judiciary: "Challenges for the 21st Century." This Judicial Branch General Session for the Bench and Bar featured Carlos Moreno, Supreme Court Associate Justice; Bill Lockyer, Attorney General; Kenneth Starr, Former Solicitor General;

Kathryn M. Werdegarr, Supreme Court Associate Justice; Ronald B. Robie, Associate Justice California Court of Appeal, third Appellate District, and moderated by Manny Medrano, Supreme Court/Legal Affairs Correspondent for ABC News in Washington D.C. The panel discussed the trends and challenges facing the California judicial system.

Saturday's lunch featured Linda Greenhouse, New York Times Supreme Court correspondent for over twenty-five years. In 1998 she received a Pulitzer Prize for her coverage of the Court, and has had unprecedented access to the inner workings of the nation's highest court.

The conference also offered a plethora of opportunities for lawyers to earn MCLE's, hosting 224 one-to-two hour programs. There were basic programs on effective legal writing for lawyers and tutorials on internet searching which appealed to a broad cross section of attorneys, as well as programs that taught how to recognize and prevent substance abuse in a high pressure profession. Other courses taught how to recognize racial disparity in all stages of criminal justice, and approaches to addressing the issue. Some courses coached lawyers on how to represent a child, or an elderly person, and on the new faces of sexual harassment and various issues in legal ethics. There were also a lot of programs specific to a certain area of law, from Family Law to Intellectual Property.

The conference offered something for nearly every aspect of the practice of law from the cutting edge of legal expertise in a particular niche, to the more mundane services firms require in every day practice, to some of the celebrities of the legal profession who continue to inspire us to follow in their footsteps.

Bar Review continued from page 1.

of friends who were split apart by a philandering boy friend who imbibed so much alcohol one night that he thought it would be a good idea to suffer sand burns with a classmate rather than go home to his girlfriend. Boy friend stealing, beach bunny hopping is only par for the course, after all we came to a Catholic institution, we breed forgive and forget.

Before I go on, let me note that the preceding story was not about anyone currently attending our school. Such is the fun of attending our institution, something that people on the outside (make no mistake, law school is a prison) would consider a horrific story of betrayal is probably met by most of my readers as a story that either happened to them or they have a friend who it happened to or they will just say they did so as to sound in the know.

But for those of us who do not, have not or will not engage in sexual congress with their friend's significant other, Bar Review can still be a moment of regret. "Who the hell did I make out with last night?" is a common refrain from friends of mine. Even when knowledge of who the make out session was with is available often there is still regret. One wakes up in the morning or afternoon depending on how well the night went and wonders why there was such a lack of control and how in the blue blazes will you face your classmate on Monday. That girl with the bad hair in civil procedure has now become the girl that you made out with and pledged to take on a date the next week.

The phenomenon of C-Blocking is also heavily in effect at Bar Review. A night at the bar can become an education in your friends' ability to kill any chance you might have had of getting to know that special someone you had your eye on all semester and finally got them at their most drunk and vulnerable (for conversation). The problem of blocking occurs for both men and women, and is particularly well performed by a group of girls that came to the bar together and "we are all leaving together". This of course leads to the awkward sneak attack strike where one person buys a round of drinks for the group in the hope that while leaning over the bar waiting for the shots to arrive he or she will have a chance to schmooze with the person they are interested in.

Beyond the social humiliation that may occur from trying to infiltrate a group, or public displays of affection, there are physical consequences that come from the steady ingestion of alcohol. Nothing tastes better than late night food after a night of drinking- whether it is the late night pizza filled with enough oil and grease that your car engine could run a day on what is left on your paper plate, or the Mexican food that is sure to have you up earlier than you intended the next morning- there is often a need for food after a review. Sadly that need for food often leads to the need for self analysis the next day as to whether one needs to hit the gym for an intense bout of cardio, but then of course rational thought kicks in and one realizes that while the world keeps spinning and food refuses to remain in the body the gym is not the place for you.

I would like to take a moment to recognize all the professors that come out to bar review. I hope you did not think I was about to actually name the professors here, you can find them typically at downtown bar reviews, if you do not know who they are then I refuse to tell you here. There are few things in law school better than knocking back a shot with a professor. I have always said that any professor that can drink with me is a professor that can lecture me, or something like that, I came up with the statement at a Bar Review so I guess it should not be trusted. It is amazing to watch a professor get drunk and start to divulge stories, who knew that our law school was so interesting! Of course there was also the unfortunate incident of a few students freaking on a professor and professing love for him, but hey, what is life without a crush on an authority figure?

So my fellow Diegans (I guess I should have said Toreros but because of loyalty to my great undergrad experience I will not label myself by another school's nickname [oh did I mention that we are going to be the 2006 national champions of NCAA football - Rose Bowl here we come again]) come out and enjoy Bar Review. Because despite the trials that may occur, it really is a great time and there is nothing like watching your fellow students mellow out.

Aaron M. Dumas Jr. is an avid blogger and student and constant dodger of his family's shadow. Hailing from the island of Jamaica he completed his undergrad studies at the University of Texas, and spends every year screaming at the television urging his team to victory. He is the founder of L.I.T. promotions and lives constantly in the fear that his parents will find out his current occupation. Oh the shame of having a lawyer in the family.

## The Fall 2005 USD Law Halloween Party

Will be on Friday, October 28<sup>th</sup>



At the



## San Diego Aerospace Museum

In Balboa Park

8:00p.m. - 1a.m.

Come shake a leg  
guys



with the ghouldest  
and gals

If you miss it...well,



\* Costumes are mandatory (even lame ones!); prizes awarded for best costume male/female, best group costume, best theme costume and more!

## Do You Want to be Distracted?

### A Review of Some of the Top Legal Blogs by Jared Ackley

I don't want to perform a disservice towards my fellow law students, but after going through a year of the Socratic method, all-nighters to finish memo drafts, and wireless internet readily at hand in the classroom, I have amassed a collection of legal blogs to distract, entertain, and perhaps even enlighten both the casual browser and serious net surfer alike. Blogging, second only to reality television in terms of providing an instantaneous and skewed personal insight into the largely-western communal psyche, is how those connected to the net can anonymously exhibit and share information and opinions. The point is that the blog is taking its place beside radio, television, and Gallup polls as a source to gauge public perception and especially as a place for the law student to feel like they're learning while burning time. So, while it's easy to just write out a list of websites to plug in at the start of class or while taking a break in the library, I'll try to give a framed analysis as to why the able-minded student should utilize the following five blogs as a jumping point for searching the legal blogosphere.

In true law school fashion, I've devised a three-prong test to review and organize the merits of each legal blog. The first prong looks for a distinctive quirk or twist that sets a particular blog apart from its brethren and hooks the laid-back, before-class browser. The second prong is affectionately named the procrastination quotient to examine what about each blog keeps loyal readers coming back day after day and class after class, ultimately bookmarking the blog firmly in place after their email site of preference. The third prong is the crucial legal enlightenment evaluation asking how the blog contributes to one's legal education by giving insight into the legal workforce, the clerkship scene, or as a way to deflect classroom interrogations by leading the class into an insightful discussion on recent blog speculation involving the next Supreme Court nominee. Additionally, the ultimate analysis of each blog may be shaped by a catch-all policy assessment that will analyze important miscellaneous considerations such as the name of the blog, aesthetics, and layout or navigability.

1. Underneath Their Robes (<http://underneaththeirrobes.blogs.com/main/>): This website is the crème de la crème of legal blogs and is a great introduction to the world of in-class procrastination and law library psychosis. Imagine *Sex in the City* meets *Almost Famous*' Penny Lane except that all the gossip and groupie hero-worship concerns the federal bench and its major and minor players from Supreme Court Justices to newly-minted Ninth Circuit Clerks. The notorious ranking of the "superhotties" of the federal judiciary is what brings people to this site with a tongue-in-cheek, *People Magazine*-type rundown of the robe-wearers who have looks to match their cerebral assets. You will stay for the witty gossip brought in from sources around the Article III system by the well-connected Article III Groupie, including information directly from the desks of law clerks across the country past and present. Your

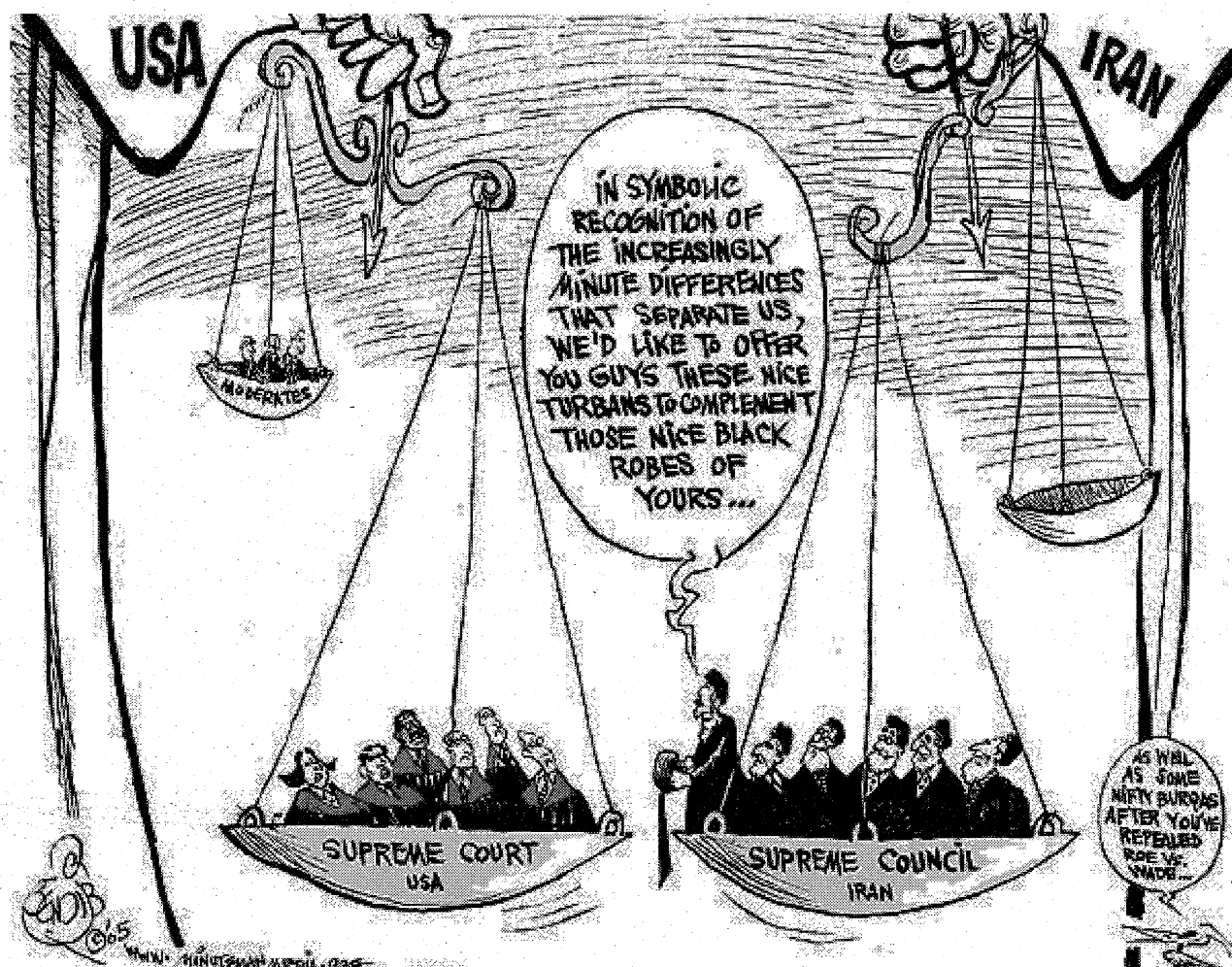
***"Imagine 'Sex in the City' meets 'Almost Famous' . . . except that all the gossip and groupie hero-worship concerns the federal bench and its major and minor players from Supreme Court Justices to newly-minted Ninth Circuit Clerks."***

intellect will be rewarded with insightful discussions of whether or not Chief Justice Roberts will keep the late Chief Justice Rehnquist's gold-striped additions to the robe of the highest judge in the land, which will make for a great discussion during civil procedure. The only draw-back to this site is the pink tinge that detracts from an immaculately organized layout because it will catch everyone's attention behind you in the stadium-seat classrooms, plus you can't tell if there is any scent to give it a little something extra.

2. Blonde Justice (<http://blondejustice.blogspot.com/>): The "young female criminal defense attorney" who runs this blog has an obvious fixation on the movie *Legally Blonde* and it is this endearing tie-in, along with the Jon Stewart quote at the top of the homepage that brings you to this site in the first place. However, as much as everyone likes Reese Witherspoon, it is the detailed and helpful personal insight into the workplace of a young practicing attorney that should keep people coming back to this site in order to learn how to really act as an office newbie outside the politically correct advice offered during orientation and graduation speeches by

## Supreme Bodies by Khalil Bendib [www.bendib.com](http://www.bendib.com)

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identifiable alumni. The anonymity of the net is a huge virtue for helping summer associates navigate their way in an often hostile setting by allowing the kind of insight that you would normally only get if you had the fortune of an ex-girlfriend's friend already working at a firm to give you the low-down. Further, blogs like this allow you a working example of how people recently out of law school feel about a particular field. So if you think you want to be a criminal defense attorney, read Blonde Justices' blog and if you think you don't have to proofread in general, read the link provided on 9/26/2005 right before a synopsis of the latest showing of *The Law Firm*.

3. SCOTUSblog (<http://www.scotusblog.com/movabletype/>): This blog is a bit more formal than the above mentioned blogs while still offering the unique insight that is the calling card of internet-based projects. You are pulled to the website because it uses the hip Supreme Court acronym "SCOTUS" to denote the inner contents of the blog, however you want to stay because the topics are interesting and are contributed by a wide range of sources including two founding partners of a law firm, a law professor, and a law student among others. The topics are interesting and well-linked to other relevant sites being discussed, giving you ruminations without as much rumor and the feeling of reading something like the *Financial Times* without the financial. Moreover, you have information on serious issues with user comments that help develop your own arguments on topical issues of the day, so hopefully

completely turning off others, so be forewarned.

5. Greedy Clerks (<http://www.infirmation.com/bboard/clubs.tcl?topic=Greedy%20Clerks>): First of all, this isn't really a blog so much as it is a message board run off the Findlaw website. However, you are drawn to it because it gives you cutting edge information regarding the nuances of the clerkship hiring process. For those actively seeking a judicial clerkship, you keep coming back because it is a 24-hour gold mine of information on clerkships and, "getting them, keeping them, and cashing in on them." Those who shudder at the thought of entering this highly competitive dance should be amused at the insider quality of this message board that is linked to by virtually every legal blog and is a great example of everything everyone else is trying to avoid. Finally, the enlightenment comes when you examine the links at the top of the page and run yet another search for a job to pay off the staggering cost of your legal education.

So there you have it, the top five blogs that should make their way to a web browser in front of you before another memo is assigned or midterm approaches. From the great wide world of legal blogs, you can learn everything from how to set up a Fantasy Supreme Court League to what kind of perfume a hiring partner wears too much of at a particular firm. Professional blogs may also contain invaluable icebreakers for your next summer associate interview since your interviewers probably peruse these sites too; if you are into patent law, check out: (<http://patentlaw.typepad.com/patent/>). Additionally, don't ignore the more serious legal blogs out there for specific fields such as civil procedure or appellate review (<http://calapp.blogspot.com/>), as professors often run these sites and finals are only two months away. Plus, in case you thought we had it good here at Warren Hall, you can affirm that conviction by reading blogs by students at other acclaimed schools such as Boalt Hall (<http://boaltalk.blogspot.com/>). Just remember that each blog leads to archives and links to other blogs that should be explored thoroughly in order to find a blog that truly fits your tastes. ChessLaw (<http://www.lawblogs.com/>) and Blawg Review (<http://blawgreview.blogspot.com/>) are the ultimate digests to find a law blog on virtually any topic for continued research online. Finally, make sure to look up whenever you are called on or the professor says to pay attention because they are about to declare a brightline rule, or the professor is talking in general. If you feel guilty about taking time out of your busy law school frying pan-life, just delete the space invaders you downloaded during corporations, or jump on over to the ultimate judicial blog site hosted by the Supremes (<http://www.supremecourtus.gov/>).

*Jared is a 2L who attended UCSD as an undergrad. Besides working on Motions, he is involved in the Negotiations Club, Business Law Society and is a Cardinals fan. His interests include international law, debtor law, and corporations as well as fiction writing.*

when your professor mentions that the O'Connor swing vote is still in play, you will know Justice Sandra D's comments on staying with the court without having to journey into the legal section of the *New York Times*.

4. Barely Legal: The Blog (<http://barelylegalblog.blogspot.com/>): Now that we've got the serious down, here is some funny for that early morning Friday evidence class. Barely Legal touts itself as the "underachiever's guide to law school." This will get anyone's attention who reminisces about undergrad on a regular basis or who thinks they might currently be qualified to contribute to this blog. You keep coming back because reading this blog is like reading the out-take version of Scott Turow's *One L*. You will either be inspired or relieved to realize how other people cope with the stress and time constraints of a legal education. You will be enlightened by the alternative flavor of other sites referenced under the links from the Barely Legal homepage. This blog is really the exact opposite of the SCOTUSblog type of blog as it is much more a personal narrative rather than opinion structured around topics and that will win points with some people while



## The SBA, Your Money, and Accountability

An Op-Ed Piece by Timothy Cross

All J.D. students are charged an activity fee of fifty dollars to their student account each year to fund the Student Bar Association. The fifty dollars is spent to support conservative, liberal, secular, religious, meaningful, and utterly meaningless activities. Many students undoubtedly disagree with many of these programs. Nevertheless, payment of this fee is mandatory and there is no provision for conscientious objectors. Even if you are not directly involved in the SBA, much of the extra-curricular activity at USD Law is shaped by the actions they take, and as such, how the money is budgeted and spent directly effects your law school experience.

Each fall, the mandatory student activity fees are given to the SBA in the form of an approximately \$50,000 check. The money collected is budgeted in a complex process that includes a proposed budget made by the SBA President, a series of budget hearings by the Budget Committee, and then finally, it is submitted to the SBA Council where it can be amended and where it must pass each semester. For those unfamiliar to this process, it would seem to be a comprehensive method whereby lots of input helps make for a good result. In practice, where your money goes is largely driven by two things: past tradition and the will of the SBA officers.

An example of a tradition is the graduation party. Approximately 20 of your 50 dollars is going to go to the graduation party for that year (regardless of whether you are graduating). Other traditional expenses include a food allotment of \$100 to each club a semester, money to reward clubs who do community service, and the fall and spring parties.

After the parties and the normal club allocations, there is generally around \$7,500 a semester for allocation to other projects and club activities. Where this money goes is largely determined by the preferences of the SBA Officers as expressed in the Budget Committee portion of the process.

The Budget Committee consists of nine people who decide which student club requests are granted and which are denied. The nine people are the five SBA officers, one Class Representative from each year and one other student. The Budget Committee orders food one afternoon and they proceed to talk about and vote on the requests. From this meeting results mostly comprehensible, sometimes confounding, determinations about all sorts of funding requests. The end result is a package proposal that is submitted to the SBA Council for a vote; the results of specific club requests are not usually provided to or reviewed by the SBA Council. The amount allotted to clubs this fall by this process was \$3,025 (estimating from past years and conversations with many student organizations, the total amount of requests this semester was probably around 7-10 thousand dollars). There was \$675 that was not allotted to anything, and the SBA Board allotted themselves \$3,000 for the fall semester to spend on "executive expenses."

***"How this money will actually be spent is not subject to review by any particular person or body because there is no method in the SBA constitution for how an 'executive expense' account is administered."***

Normally, the amount not allocated to some specific purpose is put into a discretionary fund that can be accessed by a student club or the SBA Board for specific requests. Such requests are made to a committee made up of the same members of the Budget Committee but if an amount over \$500 is requested, the SBA Council must also approve the expenditure in the same manner they have to approve the budget. The normal process was circumvented this year by the creation of the \$3,000 "executive expense" account. No concrete and specific needs for the \$3,000 account were pointed to, but several possible social events were proposed. Last semester about \$200 dollars was allocated to an executive expense account that served only to buy office supplies for the club room and SBA office. While a toner cartridge for a printer is not very controversial, thousands of dollars a year may become problematic for the SBA Board to justify. How this money will actually be spent is not subject to review by any particular person or body because there is no method in the SBA Constitution for how an "executive expense" account is administered. The account could reasonably be spent at the discretion of the

Please see Your Money continued page 11.

## Immediate Past Already Outdated Under New Constitution

Op-Ed Response by The SBA Executive Board

Respectfully, we dissent. . . . The SBA Budget process is set by the SBA Constitution and the SBA Bylaws. This past year, the SBA re-wrote a substantial portion of both of these documents to better reflect the actual activities and practices of the SBA. Our current Constitution and Bylaws call for a final budget to consist of three main categories: Operations, Discretionary Funds and Emergency Funds. The Operations portion of the budget includes: Student Club Lunch Allocations, Community Service Bonus Award Allocation, Summer Subsistence Allotment, Executive Expenses and other such categories as may arise. The Discretionary Funds portion of the budget is mandated to begin at a minimum of \$2500 each semester and the Emergency Funds must be maintained at \$1,000. Additionally, the budget bylaws indicate that any unspent monies from a semester - from any category - roll-over into the Discretionary Fund for the following semester. This new structure provides the SBA Council with a more accurate reflection of where funds are allocated each semester.

***"One can readily see that with the added clarity of the budget process, the 'new' budget bylaws creates greater accountability of the SBA Budget Committee and the SBA Executive Board."***

In past years, the SBA Executive Board did not have a regular Executive Expense category enumerated in the budget. As expenses arose, the Executive Board would write checks against funds allocated to clubs anticipating clubs would spend less money than what was requested at the beginning of the semester. This was a risky accounting procedure and one that has been remedied by the new Constitution and Bylaws. The SBA Council now has an upfront and honest budget that accurately reflects the activities of the SBA.

It is also important to note that, in addition to greater clarity regarding the budget process under the new Constitution and Bylaws, all of the old protections remain! In fact, there is a specifically enumerated process by which the SBA Council may review expenditures. As was done in Fall 2004, any SBA Councilor may request from the Treasurer an accounting of funds to date that must be reported by the next regularly scheduled SBA meeting. One can readily see that with the added clarity of the budget process, the "new" budget bylaws creates greater accountability of the SBA Budget Committee and the SBA Executive Board.

Lastly, and perhaps most importantly, we must remember that the Executive Board, Class Representatives and all but one of the Budget Committee members are elected representatives of the student body. These people have a duty to act in a manner that best represents the interests of their constituencies, and they are accountable for their actions. On September 19<sup>th</sup>, the SBA Council discussed and debated – at length – the Proposed Budget for Fall 2005. After this lengthy discussion, the budget was passed by 28-7 vote of the SBA Council. Had the budget been deemed unacceptable, the SBA Council would have denied the proposed budget and amended the document to better reflect their interests.

While we respect the views of former SBA President Tim Cross, the concerns expressed are somewhat misleading and do not accurately reflect the realities of the level of protection afforded the SBA Budget. Respectfully...

- The SBA Executive Board: Dan Rawlins, Tiffany Bailey, Matt Bresnahan, Stephanie Fink, Kirsten Widner

## SBA Approves Budget

By Troy Pickard

On Monday, September 19, members of the SBA council held a special session to vote on the SBA's annual budget. The vote was originally set to take place on the prior Monday's semi-monthly meeting. However, one particular provision of the new budget caused enough controversy to provoke the SBA to postpone the budget approval vote for a week.

In the spring semester of 2005, the SBA budget had allotted a line-item of \$209 for executive expenses. But, SBA President Dan Rawlins' budget for this fall has placed \$3,000 into a new executive expenses account.

Former SBA president Tim Cross described the change as "an end run around the normal budget process [which] circumvents the oversight embedded in the normal SBA Constitution procedures." Rawlins called this allegation "misguided," and said that the new system only offers increased budgetary oversight.

"Beyond the transparency of the new budget, all of the old protections remain in place to prevent abuse," Rawlins said.

During the special council session, many of the questions over the budget came from Cross and were directed to current Rawlins, who presided over session. Rawlins said that, in practice, the new budget will be similar to the old one, with the main difference being that the executive board will have quicker access to funds.

"[The difference] comes down to how fast we need to move on some things," Rawlins said. "If we're going to team up with the undergrad AS, or the Graduate Student Council, we may not have a lot of time."

Rawlins described the executive expense account figures as "exploratory," and said that at the end of each semester, any money remaining in the account would spill over into the discretionary fund. "There are protections built in if the funds are not spent," said Rawlins.

Cross remained skeptical, and continued to question Rawlins.

"Why does it seem onerous to you to follow the normal discretionary fund procedures," Cross asked. SBA Secretary Kirsten Widner had a response.

***"... one particular provision of the new budget caused enough controversy to provoke the SBA to postpone the budget approval vote for a week."***

"We think about [Discretionary Fund] money as money for clubs. But, if it's money in the SBA operating budget, we think about it as money for the whole school," she said. "We were trying to balance our need to support clubs on campus with the need to benefit the whole [law school] campus."

Rawlins echoed these concerns, saying that the new system makes it easier for the SBA to provide money to events and organizations that fall outside what he calls "the traditional rubric of student clubs and organizations," such as the ABA and the SDCBA.

"If the SBA is effective in holding events, then individuals will view [the executive expense account] as an effective use of their dollars," said Rawlins.

Ironically, Cross, who is the current ABA chair, said he thinks that the ABA will not benefit from the new budget, which he said actually puts clubs in a worse position than last year. According to Cross, "The creation of the large executive expense account was very disappointing because many club funding requests were denied this semester."

When it came down to the SBA Council's vote, the majority of the Council members seemed more persuaded by Rawlins, and the budget was approved 28-7. Time will tell if the expense account turns out to be wasteful, or a benefit to USD law students generally.

*Ed. Note: Troy Pickard is Motions' SBA Representative. In order to remain impartial, he does not vote on any issues.*

FOR MORE INFORMATION ON THE SBA, INCLUDING SBA MEETING MINUTES, STUDENTS CAN VISIT THE FOLLOWING WEBSITE:  
[WWW.SANDIEGO.EDU/USDLAW/SBA](http://WWW.SANDIEGO.EDU/USDLAW/SBA)



## The Art of Litigation

by Rebecca Blain

King Tutankhamun and the Golden Age of the Pharaohs was the blowout event of this year's southern California summer; sponsored by the Los Angeles County Museum of Art (affectionately known as LACMA by kids in the art world), the event showcased 130 artifacts dug up from the tombs of King Tut and other ancient Egyptians. My mom had seen the exhibit when it was here in the 70s and—lucky for me—she bought tickets for my entire family to see it. I don't know what I expected, but it was really incredible. The exhibit had all kinds of great stuff—a wooden throne fashioned for royalty, canopic jars for internal organs, games, statues, and everyday Egyptian stuff engraved with hieroglyphic messages. The exhibit even had Tut's royal crown—pressure sealed behind three inches of glass, it was impressive enough to make anyone's eyes wide. King Tut was a truly an amazing experience, but, as a soon-to-be law student, by the time I was done I

up in arms over the excavation and exhibition of Tut's belongings. It's true, right? We would be touting the free exercise clause like it was a weapon and amassing on the Supreme Court with poster board signs and enraged rallying cries. In reality, none of us lose any sleep over the issue. Whatever we believe—Muslim, Amish, Christian, Jew—we all agree to disagree with King Tut.

I'm a big fan of the first amendment; I would tailgate for it if there were ever an occasion to. And yet, as great as the first amendment is, it rarely if ever gets its due. Usually the first amendment is *my* right to go to church on Sunday and *your* right to go to temple on Saturday and, of course, our *collective* right to avoid any uncomfortable discussion on belief by simply exchanging awkward nods when *I* find out what you are, and *you* find out what I am. Oftentimes the first amendment looks like the tenuous binding between a patchwork of beliefs—and even I have to admit that

***“...if the majority of Americans belonged to the Church of Egyptian polytheism and truly believed that personal possessions kept in the grave would shape life after death, then the majority of the United States would be up in arms over the excavation and exhibition of Tut's belongings.”***

had decided that I would sue LACMA on behalf of King Tut...and other similarly situated Egyptians.

You might be wondering what kind of cause of action you could bring against a non profit, federally funded art institution. Gratuitous display of cultural hegemony? Unlawful commodification of historical artifacts? False imprisonment of ancient artwork? Nah, I want it to be bigger and better.

Try this: I'm going to sue LACMA for flying in the face of the first amendment. Every one of the artifacts on display at the King Tut exhibit was believed to accommodate the deceased in the afterlife; Tut did everything in his power—including burying himself in the middle of the desert—to ensure that his possessions would be undisturbed and his eternity would be secure. There is incontrovertible evidence that LACMA knew this (Exhibit A is going to be that complimentary informational pamphlet I picked up on my way in) and yet they brazenly disregarded Tut's beliefs in the pursuit of their own organizational goals. I'm going to sue LACMA because they have shamelessly profited by denying King Tut his constitutional right to free exercise of religion.

Before you start, I know what you're thinking—the first amendment wouldn't apply to King Tut, silly, because he was an Egyptian living three thousand years ago before there was even such a thing as the Constitution. Agreed. But I don't think that's the biggest obstacle to my argument. I think the biggest obstacle to a retroactive first amendment action for Tut is that no one reading this article—including myself—really believes that anything in Tut's tomb followed him after death.

Not convinced? Look at it this way—if the majority of Americans belonged to the church of Egyptian polytheism and truly believed that personal possessions kept in the grave would shape life after death, then the majority of the United States would be

its most notable contribution to society of late seems to be that every December I drive through the same intersection and there's a nativity, a menorah, and Santa Claus all facing off on different corners of the street.

But if the first amendment is functioning as the ultimate P.C. cop-out, I think it's because we're not using it to its full potential. If we really took the first amendment out for spin I think we'd see that it doesn't give lip service to a handful of scattered values so much as it gives Constitutional status to a single belief:

Everyone has the right to seek out the answers to life's most important questions. Even if what we believe doesn't look the same, we *all* believe that there is truth to be found, and we all defend the unequivocal right to find it.

I think that this is what makes the first the greatest amendment ever, and I like it so much I'd give it to everybody. You may or may not know that Tut lived in a time of great religious turmoil. His father—Akhenaten—was streamlining the voluminous Egyptian pantheon into one of a more monotheistic nature when he met with an unfortunate demise, and it was the young King Tut who was left at the crossroads of either following his father's footsteps or reverting to conventional wisdom. Even if sun gods and ritualistic mummification are a thing of the past, the quest for spiritual truth is timeless, and I think it deserves some first amendment recognition.

So, back to my lawsuit; as lead counsel, I'd be entitled to about forty percent of Tut's posthumous punitive earnings. I wouldn't have a problem with returning most of this to LACMA (they are, after all, a non profit art institution...although I'm actually not really sure if they're federally funded.) It would be enough for me that they had something to think about...

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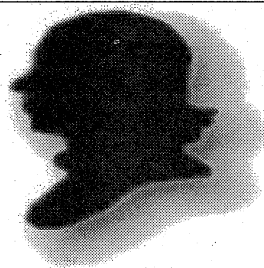
#### Your Money continued from page 10.

President, by the President and Treasurer acting together, by a majority vote of SBA Board members, by only a unanimous vote of the board members, or simply at the request of any board member.

Generally, very few students have paid much attention to all of these proceedings. SBA Councilors who have wanted to make sure the money is spent wisely have run into the problem of not having the necessary information available to them. Unlike many public organizations that allow their financing to be more closely inspected, the SBA has never publicly shown what their money is actually being spent on.

In past years, the lack of transparency in the budget expenditures has fueled complaints from students and student organizations that the SBA is spending the money poorly or even discriminating against student clubs. Complaints are only likely to increase this year because of the “executive expense” account. The budget requests from clubs far exceed the money in the discretionary fund which will either result in clubs having to take the extraordinary measure of asking the SBA President for money from the “executive expense” account or in not having the funds they need.

To combat the problem of perceived partiality, the SBA could take a couple of different measures. One, they could firmly set the amount certain types of student club events receive. While there are general guidelines now, they are not comprehensive and some guidelines, such as the amount for food for a speaker event, are not followed. On the other side, the SBA could make public their financial accounts and provide information about the allocations to student organizations. Making this information available would be simple because the SBA states a purpose for each check they write in their accounting program. All of these checks also correspond to a specific reimbursement request from the individual seeking the money. Making club requests available would also be easy because they are already in *Tim Cross is the immediate Past President of the SBA and current ABA Chair.*



### Join The Federalist Society!

*The courts must declare the sense of the law; and if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would equally be the substitution of their pleasure to that of the legislative body.*

-The Federalist No. 78

- ▶ The Federalist Society is a group of conservatives and libertarians dedicated to reforming the current legal order. We are committed to the principles that the state exists to preserve freedom, that the separation of governmental powers is central to our Constitution, and that it is emphatically the province and duty of the judiciary to determine what the law is, not what it should be.
- ▶ There are approximately 25,000 members of the Federalist Society nationwide in its Lawyers, Students, and Faculty Divisions.
- ▶ We invite **you** to bring your ideas, conflicts and issues and join us as we engage the legal community in debate and the open exchange of ideas. Our chapter welcomes any and all legal perspectives, as our members often hold conflicting views on many issues. Our primary goal, above all, is to foster debate.
- ▶ Questions? Please contact us at [usdlawfedsoc@gmail.com](mailto:usdlawfedsoc@gmail.com)

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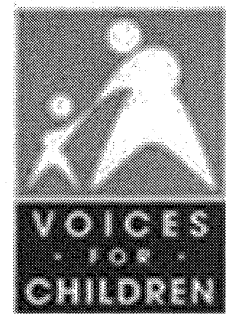
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Fill in the grid so that every row, every column, and every 3x3 box contains the digits 1 through 9.

		5				1		
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	8	4	6					
		9				2		

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The Thin Blue Line

September 22  
The Corporation

September 29  
Uncovered

October 6  
The Big One

October 14  
The Battle  
of Algiers

October 21  
All the  
President's Men

October 28  
NO FILM THIS WEEK

November 4  
No Man's Land

November 11  
Manufacturing  
Consent

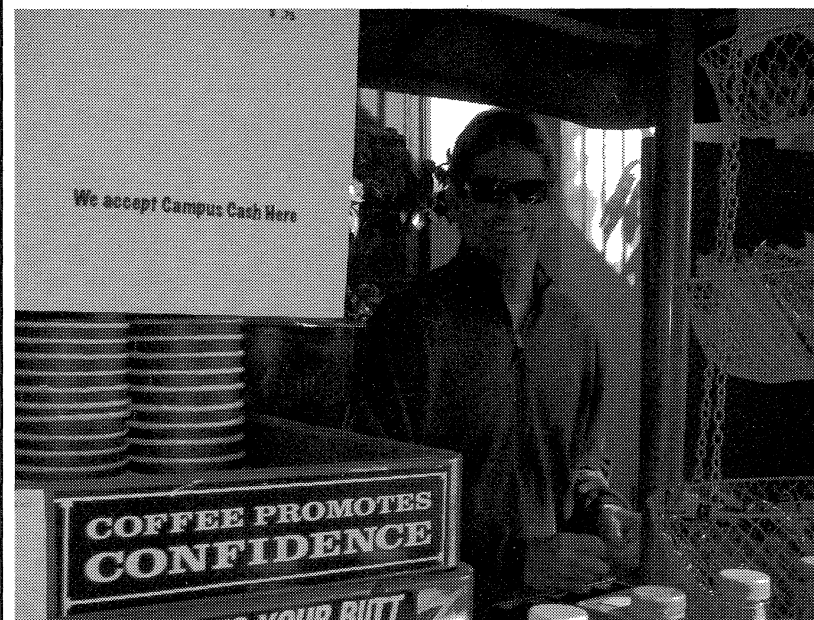
November 18  
Long Night's  
Journey into Day

December 2  
Hearts and Minds

December 9  
This is What Free  
Trade Looks Like

## YOU SHOULD ALREADY KNOW...

### The Czar Of Czaffeine An Interview with Doug of Cardiff Coffee



- Q. How long have you run this Coffee Cart at USD Law?
- A. 13 years, but it feels like 30. I know way too many lawyers.
- Q. Have you ever thought about attending law school?
- A. I already have for the last 13 years.
- Q. What are some funny moments you have seen or overheard while working at USD Law?
- A. I try and keep it all funny. Most folks here are wound a little tight so I try and keep people laughing.
- Q. How do you feel about giving already aggressive lawyer-types more caffeine? Do you have to abide by any special state or federal laws?
- A. I am just a legal pusher, so until they outlaw caffeine I will keep adding fuel to the fire.
- Q. What's the best deal you have in terms of coffee size, strength, and cost?
- A. The best deal I have is a quad i.e. the Keith Richards. Four shots of espresso served straight up with a cigarette back for \$3.50. I do require a release for this drink, liability you know.
- Q. Have you ever had to turn someone down because they'd obviously had too much already?
- A. I generally will serve anyone who has money; the laws governing caffeine abuse are pretty mellow.

Thanks, Doug!!